IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1953

No. 406

PETE HERNANDEZ, *Petitioner*

VS.

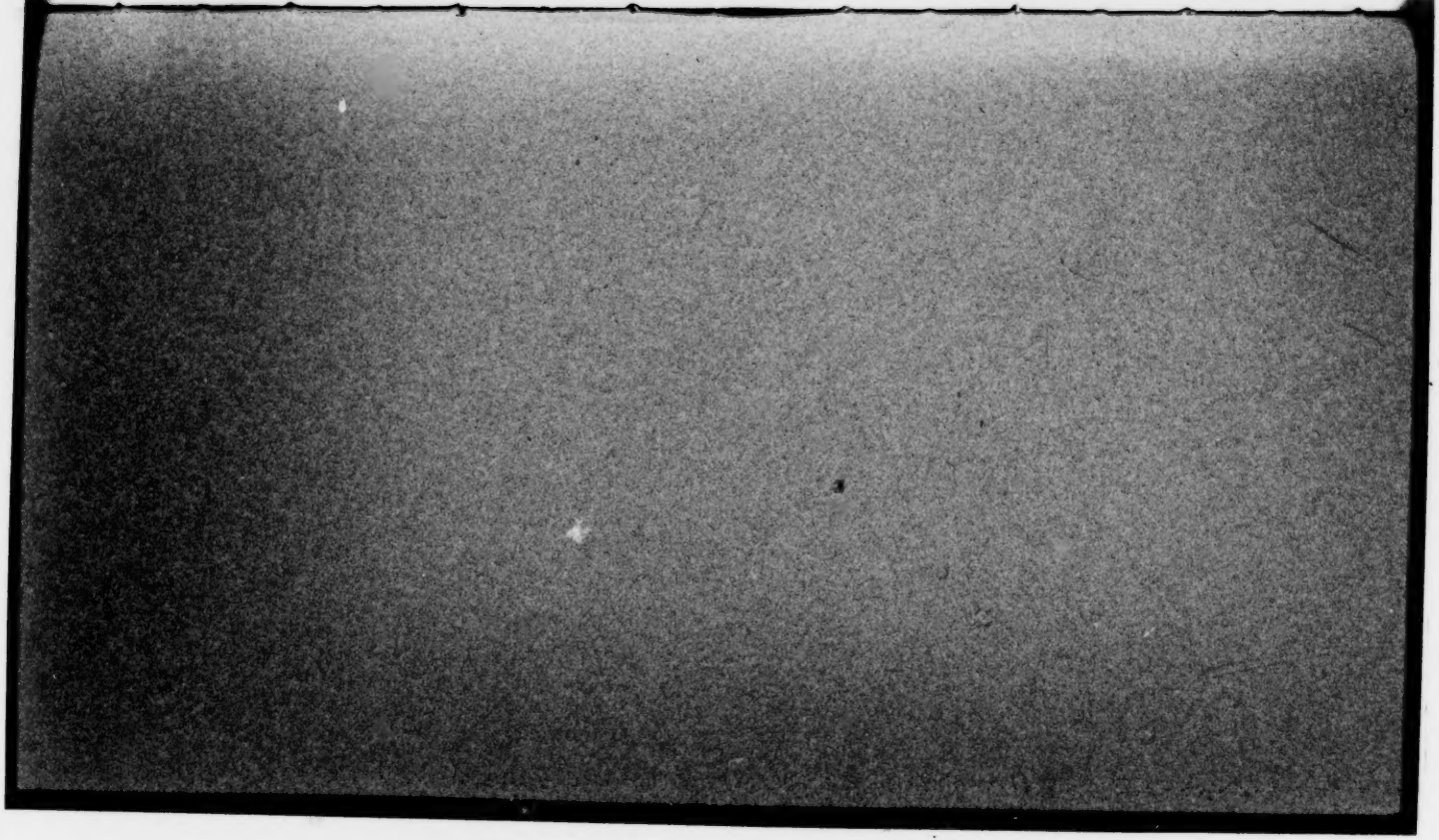
THE STATE OF TEXAS, *Respondent*

BRIEF FOR PETITIONER

ON WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS OF THE STATE OF TEXAS

CARLOS C. CADENA
GUS C. GARCIA
Attorneys for Petitioner

MAURY MAVERICK, JR.
JOHN J. HERRERA
JAMES DE ANDA
CHRIS ALDRETE
Of Counsel



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STATEMENT DISCLOSING BASIS OF JURISDICTION

1. Jurisdiction is invoked under 28 U. S. C. Sec. 1257(3).

2. The judgment of the Court of Criminal Appeals of the State of Texas, court of last resort in criminal matters, was entered June 18, 1952. (R. p. 91). Motion for rehearing, timely filed, was overruled on October 22, 1952, (R. p. 111).

3. Petitioner was indicted for murder by a grand jury of Jackson County, Texas. (R. p. 1). He moved to quash the indictment because persons of his national origin were intentionally, arbitrarily and systematically excluded from service as jury commissioners and as grand jurors. (R. p. 2). Petitioner also moved to quash the jury panel because persons of Mexican descent were intentionally, arbitrarily and systematically excluded from service on all petit juries, including the one which was summoned to try petitioner. (R. p. 5). Both motions were overruled by the trial court. (R. pp. 5, 7). Petitioner was convicted and sentenced to life imprisonment. (R. p. 17). Motion for new trial was timely filed and overruled. (R. p. 21). In affirming the conviction, the Texas Court of Criminal Appeals held that petitioner had not shown intentional, arbitrary and systematic exclusion of persons of Mexican descent from jury service, and that a defendant of Mexican descent is not denied due process or equal protection of the law by the intentional, arbitrary and systematic exclusion of persons of Mexican descent from the grand

jury which indicted him and from the petit jury which convicted him. (R. pp. 91-98).

4. The conclusion of the Texas Court of Criminal Appeals presents a substantial question concerning the extent and scope of the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States. The Texas Court of Criminal Appeals has denied to petitioner a right specially set up and claimed by petitioner under the Fourteenth Amendment to the Constitution of the United States.

5. Petition for writ of certiorari was filed in this Court on January 21, 1953 and was granted October 12, 1953. (R. p. 111).

6. The following cases sustain jurisdiction:

Strauder v. *West Virginia*, 100 U. S. 303 (1879).

Neal v. *Delaware*, 103 U. S. 370 (1880).

Norris v. *Alabama*, 294 U. S. 587 (1935).

Smith v. *Texas*, 311 U. S. 128 (1941)

Truax v. *Raich*, 239 U. S. 33 (1915).

Westminster School District v. *Mendez*, 161 F. 2d 774 (1947).

REPORT OF CASE BELOW

The opinion of the Texas Court of Criminal Appeals is reported, *sub nom. Hernandez* v. *State*, in 251 S. W. 2d 531.

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QUESTIONS PRESENTED

1. Whether, in criminal proceedings against petitioner, a person of Mexican descent, the arbitrary and systematic exclusion of persons of Mexican descent from service as grand jurors and petit jurors deprives petitioner of liberty without due process of law and/or denies to him the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States.

2. Whether the Court of Criminal Appeals of the State of Texas, in denying to petitioner the benefit of the rule of exclusion announced by the Supreme Court of the United States in *Norris* v. *Alabama*, 294 U. S. 587 (1935), and in requiring petitioner, because he is not a Negro, to show express discrimination in the selection of grand jurors and petit jurors, deprived petitioner of liberty without

due process and/or denied to petitioner the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States.

NATURE OF THE CASE

Petitioner, a person of Mexican descent, was indicted for murder by a grand jury of Jackson County, Texas. (R., p. 1) Prior to a trial on the merits, petitioner moved to quash the indictment because persons of Mexican descent were systematically and arbitrarily excluded from service on the jury commission which selected the grand jury which indicted petitioner, and from service on such grand jury. (R., p. 2) Petitioner also filed a motion to quash the petit jury panel called for service in petitioner's case because persons of Mexican descent were arbitrarily and systematically excluded from service on such petit jury. (R., p. 3) Both of these motions were overruled by the trial court. (R., pp. 3-5). An appeal was perfected to the Court of Criminal Appeals of the State of Texas, the state court of last resort in criminal cases. The Court of Criminal Appeals affirmed the conviction. 251 S. W. 2d 531. The sentence assessed was life imprisonment. (R., p. 22) As reflected by the opinion of the state court, the action of the trial court in overruling the two motions above mentioned was the sole question presented to that court for review. (R., p. 91).

SUMMARY OF ARGUMENT

I.

The Fourteenth Amendment to the Constitution of the United States forbids the arbitrary and systematic exclusion of persons of Mexican descent from

jury service. There is no basis for the theory advanced by the Texas Court of Criminal Appeals that "in so far as the question of discrimination in the organization of juries in the state courts is concerned, the equal protection clause of the Fourteenth Amendment contemplated and recognized only two classes as coming within that guarantee: the white race, comprising one class, and the Negro race, comprising the other."

In demanding the right to participate fully in the government of their state by serving on juries, persons of Mexican descent are not demanding what the Texas court described as recognition "as a special class" which is entitled "to special privileges in the organization of grand and petit juries in the State of Texas." Petitioner merely demands a right which is accorded to all: the right to a trial by a fair and impartial jury from which persons of his national origin are not arbitrarily and systematically excluded.

The recognition of petitioner's constitutional right will not, as the Texas court fears, "destroy our jury system"; nor will such recognition write into the equal protection clause "the proportional representation . . . of nationalities."

II.

In *Norris* v. *Alabama*, 294 U. S. 587 (1935), this Court held that the unexplained absence of Negroes from juries over a long period of time, when there were in the county Negroes eligible for jury service, constituted proof of discrimination in the selection of juries. Petitioner presented such proof

with reference to persons of Mexican descent in Jackson County, Texas. By refusing to give to petitioner, solely because he is not a Negro, the benefit of the evidentiary rule which operates in favor of Negroes upon the establishment of similar facts, the Texas court has established a rule of evidence which imposes on petitioner a more onerous burden of proof than is imposed on Negroes, and which does so solely, expressly and exclusively because petitioner is not a Negro. The promulgation of an evidentiary rule founded exclusively on a classification based on race deprives petitioner of his liberty without due process of law and deprives him of the equal protection of the laws.

ARGUMENT

I.

INTENTIONAL, ARBITRARY AND SYSTEMATIC EXCLUSION OF PERSONS OF MEXICAN DESCENT FROM JURY SERVICE DEPRIVES PETITIONER OF LIBERTY WITHOUT DUE PROCESS OF LAW AND DENIES TO HIM THE EQUAL PROTECTION OF THE LAWS.

The Texas Court of Criminal Appeals is firmly committed to the view that exclusion of persons of Mexican descent from jury service does not violate the provisions of the Fourteenth Amendment. One of the earlier enunciations of this view is to be found in *Salazar* v. *State*, 149 Tex. Crim. Rep. 260, 193 S. W. 2d 211 (1946). In that case, the Texas court said:

> "The complaint is made of discrimination against nationality, not race. The Mexican people are of the same race as the grand jurors.

> We see no question presented for our decision under the Fourteenth Amendment." 193 S. W. 2d 211, 212.

This position was reaffirmed in 1951, when the Texas court held that exclusion of persons of Mexican descent raised no constitutional question, since they "are not a separate race, but are white people of Spanish descent." *Sanchez* v. *State*, 243 S. W. 2d 700, 701.

In the case now before this Court, the Texas court said:

> "In contemplation of the Fourteenth Amendment . . . Mexicans are members of and within the classification of the white race, as distinguished from members of the Negro race." 251 S. W. 2d 531, 535. (R., p. 97).

Again:

> "It is apparent, therefore, that appellant seeks to have this court recognize and classify Mexicans as a special class within the white race and to recognize that special class as entitled to special privileges in the organization of grand and petit juries in this state." 251 S. W. 2d 531, 535. (R., p. 97).

And again:

> "To our minds, it is conclusive that, in so far as the question of discrimination in the organization of juries in state courts is concerned, the equal protection clause of the Fourteenth Amendment contemplated and recognized only two classes as coming within that guarantee: the white race, comprising one class, and the Negro race, comprising the other class." 251 S. W. 2d 531, 535. (R., p. 97).

There can be no doubt that, as far as the Texas court is concerned, the Fourteenth Amendment does not prohibit discrimination in the selection of juries because of national origin or, as the Texas court calls it, "nationality."[1] Applications of this view are to be found in the following cases, each of which involved exclusion of persons of Mexican descent: *Ramirez* v. *State*, 119 Tex. Crim. Rep. 362, 40 S. W. 2d 138 (1931), *cert. denied*, 284 U. S. 659 (1931); *Carrasco* v. *State*, 130 Tex. Crim. Rep. 392, 95 S. W. 2d 433 (1936); *Sanchez* v. *State*, 147 Tex. Crim. Rep. 436, 181 S. W. 2d 87 (1944); *Bulsillos* v. *State*, 152 Tex. Crim. Rep. 275, 213 S. W. 2d 837 (1948).

Petitioner submits that the view of the Texas court rests upon a misinterpretation of the Fourteenth Amendment, and that some of the reasons given by the state court in support of its conclusions in this case constitute a misconception of the contentions made by petitioner. Petitioner believes and insists that intentional, systematic and arbitrary exclusion of persons of Mexican descent from jury service violates the due process and equal protection clauses of the Fourteenth Amendment.

A. *Denial of Due Process.*

As this Court has pointed out, the Texas statutory scheme governing the organization of juries in state courts is fair on its face and is capable of being carried out with no discrimination whatever. *Smith* v. *Texas*, 311 U. S. 128 (1941). The exclusion of persons of Mexican descent from jury service in this

1. The use of the term "nationality" by the Texas court is questionable usage. Petitioner does not contend that Mexican citizens have the right to sit on Texas juries. The use of the term "Mexicans" is also incorrect from the point of view of citizenship. Except when quoting the Texas court, the term "persons of Mexican descent" is used throughout this brief.

case results solely from the actions of those citizens of Jackson County, Texas, who were entrusted with the solemn duty of administering, in a fair and impartial manner, statutes which are capable of being administered without discrimination. The jury commissioners of Jackson County have taken it upon themselves to exclude persons of Mexican descent from juries. That such action is a violation of the due process clause of the Fourteenth Amendment becomes apparent when it is examined in the light of the following language by the Court of Appeals for the Ninth Circuit:

> ". . . The acts of respondents were and are without authority of California law . . . Therefore, conceding for the sake of argument that California could legally enact a law authorizing the segregation as practiced, the fact stands out unchallengeable that California has not done so . . . By enforcing the segregation of school children of Mexican descent . . . respondents . . . have violated . . . the Fourteenth Amendment by depriving them of liberty and property without due process of law . . ." *Westminster School District* v. *Mendez*, 161 F. 2d 774, 780-781.

The court in the *Mendez* case observed that it was "aware of no authority justifying any segregation fiat by any administrative or executive decree." 161 F. 2d at 780. Is there any authority justifying the exclusionary fiat by the jury commissioners of Jackson County?

B. *Denial of Equal Protection of the Laws.*

Petitioner cannot agree with the view of the Texas court that, insofar as the organization of

juries in state courts is concerned, "the equal protection clause of the Fourteenth Amendment contemplated and recognized two classes as coming within that guarantee: the white race, comprising one class, and the Negro race, comprising the other class." Petitioner has found no decision by this Court, by the lower Federal courts, or by the courts of any other state which will support such a conclusion. The conclusion of the Texas Court is supported only by its own decisions.

Petitioner has found no decision by this Court dealing with the exclusion of persons from juries because of national origin. With but one exception,[2] all decisions by this Court concerning the exclusion of ethnic groups from jury service have involved the exclusion of Negroes. Apparently, all of the cases considering the question of exclusion because of national origin in which a definitive decision has been made have arisen in Texas and have involved exclusion of persons of Mexican descent.[3]

The only expression by this Court dealing with exclusion from juries because of national origin seems to be the following dictum uttered in *Strauder* v. *West Virginia*, 100 U. S. 303, 308 (1879):

> "Nor, if a law be passed excluding all naturalized Celtic Irishmen, would there be any doubt of its inconsistency with the spirit of the amendment."

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2. In the lone exception, a person of Japanese descent complained that members of his race were not allowed to serve as jurors. But there the exclusion was because of citizenship, and not because of race or National origin. In re *Shibuya Jugiro*, 140 U. S. 291 (1891).

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3. In *State v. Guirlando*, 152 La. 570, 93 So. 796, the Louisiana court indicated that the intentional exclusion of persons of Italian descent from jury service would be unconstitutional.

The Texas court's "two classes" theory is obviously inconsistent with this Court's statement to the effect that the provisions of the Fourteenth Amendment "are universal in their application, to all persons under the territorial jurisdiction, without regard to any differences of race, of color, or of nationality." *Yick Wo* v. *Hopkins*, 118 U. S. 336, 369 (1886). And how would the "two classes" theory explain the direct holding by this Court that a state statute which imposed discrimination in employment against a white Austrian violated the Fourteenth Amendment? *Traux* v. *Raich*, 239 U. S. 33 (1915).

The plain truth is that, in announcing its "two classes" theory, the Texas court is reading into the Fourteenth Amendment a limitation which is not there.

In fact, the Texas court has not uniformly construed the equal protection clause of the Fourteenth Amendment in the manner indicated by its opinion in this case. In *Juarez* v. *State*, 102 Tex. Crim. Rep. 297, 277 S. W. 1091 (1925), the Texas court held that systematic exclusion of Roman Catholics from juries is proscribed by the Fourteenth Amendment. A careful reading of the opinion in the *Juarez* case has uncovered no facts even tending to show that the defendant in that case was a *Negro* Roman Catholic. The *Juarez* case, although called to the attention of the Texas court by petitioner in his brief filed in that court, is not discussed in the Texas court's opinion in this case. No attempt was made by the Texas court to explain the obvious incompatability of the holding in the *Juarez* case with the decision in this

case. In order to explain the *Juarez* decision, the "two classes" theory, through some process of asexual inbreeding, must give birth to a third class.

Would the "two classes" theory be extended to cases involving discrimination in the field of education? The lower Federal courts have held that segregation of school children of Mexican descent violates the Fourteenth Amendment. *Gonzalez* v. *Sheely*, 96 F. Supp. 1004 (D. C. Ariz., 1951); *Mendez* v. *Westminster School District*, 64 F. Supp. 544 (S. D. Cal., 1946), *aff'd.*, 161 F. 2d 774 (9th Cir., 1947). Before these cases were decided, a Texas court stated that arbitrary segregation of children of Mexican descent in public schools, if shown, would violate the Fourteenth Amendment. *Del Rio Independent School District* v. *Salvatierra*, 33 S. W. 2d 790 (Tex. Civ. App., 1930).

Would the "two classes" theory be extended to cases involving judicial enforcement of covenants restricting sale of land to members of certain ethnic groups? A Texas court has held that the Fourteenth Amendment forbids judicial enforcement of a covenant prohibiting sale of land to persons of Mexican descent. *Clifton* v. *Puente*, 218 S. W. 2d 272 (Tex. Civ. App., 1949, err. ref'd.).

To petitioner's knowledge, the "two classes" theory has not been applied in any type of case involving discrimination or segregation except by the Texas Court of Criminal Appeals in cases involving exclusion of persons of Mexican descent from jury service. True, the Texas court limits its unique theory to cases involving discrimination in the

organization of juries in state courts. But there is no apparent reason for the application of a unique rule in the jury exclusion cases. The Fourteenth Amendment itself does not mention juries. The language of the equal protection clause is simple and direct. It provides that no state "shall deny to any person within its jurisdiction the equal protection of the laws." The word "person" is neither preceded nor followed by any restrictive adjective.

What is so sacred about discrimination in the organization of juries which requires a reading into the Fourteenth Amendment of a limitation which this Court said, in the *Strauder* case, is not there? What is so desirable about discrimination in the organization of juries which would prompt a court into reading into the Fourteenth Amendment a limitation which the lower Federal courts have held, in the field of education, is not there, and which a Texas court has said is not there? What is so peculiar about discrimination in the organization of juries which requires a court to read into the Fourteenth Amendment a limitation which a Texas court, concerning the enforcement of restrictive covenants, has held is not there? What is so sacred, so desirable and so peculiar about such discrimination that the Texas court is moved to ignore the statement by this Court in *Yick Wo* v. *Hopkins* that the provisions of the Fourteenth Amendment "are universal in their application . . . without regard to any differences of . . . nationality"? 118 U. S. at 369.

Further illustration of the unsoundness of the "two classes" theory is to be found in the cases hold-

ing that exclusion of members of defendant's political party, or faction thereof, constitutes discrimination. *Kentucky* v. *Powers*, 139 Fed. 452 (C. C. E. D. Ky., 1905), *rev'd on another ground*, 201 U. S. 1 (1906); *State* v. *McCarthy*, 76 N. J. L. 295, 69 Atl. 1075 (Sup. Ct., 1908). In both of these cases the decision was based on the equal protection clause of the Fourteenth Amendment.

This Court has held that the exclusion of daily wage earners from petit jurors in Federal courts was reversible error. *Thiel* v. *Southern Pacific Co.*, 328 U. S. 217 (1946). And in *Ballard* v. *United States*, 329 U. S. 187 (1946), this Court held that where women were qualified to serve on juries under state law, they could not be excluded from juries in Federal courts. Petitioner admits that in those cases the decisions were based on the fact that the exclusions shown amounted to an improper administration of justice. But in both cases this Court was concerned with upholding the tradition that trial by jury contemplates an impartial jury from a cross section of the community. The following language from the *Thiel* case is significant:

> "The American tradition of trial by jury . . . necessarily contemplates an impartial jury drawn from a cross-section of the community . . . This does not mean, of course, that every jury must contain representatives of all the economic, social, religious, racial, political and geographical groups of the community . . . But it does mean that prospective jurors should be selected by court officials without systematic and intentional exclusion of any of these groups. Jury competence is an individual rather than a class

matter. That fact lies at the very heart of the jury system. To disregard it is to open the door to class distinctions and discriminations which are abhorrent to the democratic ideals of trial by jury." 328 U. S. at 220.

Certainly, the Fourteenth Amendment requires that the criminal procedure of the state be such as to assure to a defendant a fair trial. For example, a defendant is denied his constitutional rights if he is tried by a prejudiced judge. *Tumey* v. *Ohio*, 273 U. S. 510 (1927). The requirement of an impartial jury is closely analogous. See Ex parte *Wallace*, 24 Cal. 2d 933, 152 P. 2d 1 (1944). Can it be said that in a county where, over a period of 25 years, no persons of Mexican descent have been called for jury service, a person of such descent is afforded a trial by a fair and impartial jury? This Court must bear in mind that, until shortly before petitioner's trial, several places catering to the public displayed signs reading: "No Mexicans." This Court cannot overlook the fact that in the county in which petitioner was tried up to three or four years before this trial, children of Mexican descent were segregated in the public schools. Perhaps there is some significance in the fact that in the court house of Jackson County, Texas, judicious use of a sign in the Spanish language was calculated to direct persons of Mexican descent to the public rest room facilities furnished for Negroes. (R., pp. 38, 44, 75).

The blunt truth is that in Texas, persons of Mexican descent occupy a definite minority status. They are subject to discrimination in employment. Marden, *Minorities in American Society*, 140

(1952). In an estimated 50 Texas counties with a large population of persons of Mexican descent, persons of Mexican descent have never been known to be called for jury service. Kibbe, *Latin-Americans in Texas*, 229 (1946). They are frequently denied access to public places and facilities. McDonagh & Richards, *Ethnic Relations in the United States*, 179 (1953). Children of Mexican descent have been segregated in the public schools. The recent end of this practice in Jackson County, Texas, is perhaps explainable by the fact that in 1948 a Federal District Court in Texas ruled that such segregation violated the Fourteenth Amendment.[4] As late as May 8, 1950, the Texas State Board of Education found it necessary to issue an order specifically directing compliance with this ruling throughout the state. Marden, *Minorities in American Society*, 149.

It is against this background that this Court should consider the statement by the Texas court that petitioner seeks to have "Mexicans" recognized as a "special class within the white race" which is "entitled to special privileges" in the organization of juries. This "special privilege" of which the Texas court speaks is the right to be free from discrimination in the selection of juries. To eliminate such discrimination, according to the Texas court, would violate the Fourteenth Amendment by "extending to members of a class special privileges not accorded to all others of that class similarly situated." 251 S. W. 2d 531, 535. The "class" of which the court speaks is composed of members of the white race. The Texas

4. *Delgado v. Bastrop Ind. School Dist.*, Civ. Cause No. 338 (W. D. Tex., 1948). The court's judgment in this unreported case is reprinted in Sanchez, *Concerning Segregation of Spanish-Speaking Children*, 72-73 (IX *Inter-American Education Occasional Papers*, University of Texas, 1951)

court is apparently under the impression that, in Jackson County, Texas, only Negroes are allowed to serve as jurors. Unless the Texas Court of Criminal Appeals thinks that only Negroes are allowed to serve as jurors in Jackson County, it is impossible to see how elimination of discrimination against persons of Mexican descent would give to this "special class" any "special privileges" which are not enjoyed by other members of the white race in Jackson County. Can the denial to persons of Mexican descent of a right enjoyed by "all others of that class similarly situated" be defended by reference to imaginary "special privileges"?

Petitioner readily admits that the Fourteenth Amendment does not require proportional representation of the component ethnic groups of a community on juries. But to condemn the exclusion shown in this case is not tantamount to imposing proportional representation. The fact that Negroes have succeeded in their fight against exclusion from juries has not imposed proportional representation of Negroes. The fact that the Texas court has held that Roman Catholics may not be systematically excluded has not imposed proportional representation of Roman Catholics.

Petitioner does not contend that any proportion of jurors must be persons of Mexican descent. He does not contend that he has a right to demand that persons of Mexican descent should sit as members of the grand jury which indicted him, or of the petit jury which convicted him. Upholding the rights of Negroes and Roman Catholics to sit on juries has not

given these groups any such rights. To uphold petitioner in this case would not give such rights to persons of Mexican descent. No reason is given why the extension of equal protection to petitioner would bring about consequences which did not result from the extension of equal protection to Negroes and Roman Catholics.

Petitioner does not demand that persons of Mexican descent sit on any particular jury. He merely asks that they not be systematically excluded from *all* juries. This can be achieved without destroying our jury system and without violating the Fourteenth Amendment. It has been achieved in Texas in cases involving Negroes and Roman Catholics, and the jury system has not been destroyed.

With all due deference to the Texas court, petitioner submits that, in talking of proportional representation and of giving to petitioner the right to demand that a person of Mexican descent be on a particular jury, the Texas court was demolishing a straw man of its own creation. In view of the undoubted minority status of persons of Mexican descent in Texas, it is at least mildly ironic for the Texas court to uphold the discriminatory practice of which petitioner complains by pointing out that, after all, persons of Mexican descent are members of the dominant "class" in Texas. (See Appendix B).

Petitioner believes that the following language, in *Cassel* v. *Texas*, 339 U. S. 282, 287 (1950), is pertinent: "Obviously, the number of races and nationalities appearing in the ancestry of our citizens

would make it impossible to meet a requirement of proportional representation." The correctness of petitioner's contention is implicit in such language. How could the "number of . . . nationalities appearing in the ancestry of our citizens . . . make it impossible to meet a requirement of proportional representation" if, as the Texas court holds, persons may be excluded from jury service because of national origin? If the Texas court's "two classes" theory is correct, the number of nationalities appearing in the ancestry of our citizens is altogether irrelevant. It can present no problem, since persons may be systematically excluded from jury service because of their national origin.

Finally, let us assume that the Texas legislature passed a statute excluding persons of Mexican descent from jury service. Would such legislation be constitutional? Obviously not. Can the jury commissioners of Jackson County, Texas, do what the state legislature cannot do? Petitioner thinks not.

II

WHERE IT IS SHOWN THAT, OVER A PERIOD OF TWENTY-FIVE YEARS, NO PERSONS OF MEXICAN DESCENT HAVE BEEN CALLED FOR JURY SERVICE, ALTHOUGH MEMBERS OF SUCH ETHNIC GROUP WERE AVAILABLE AND QUALIFIED FOR JURY SERVICE, SUCH EVIDENCE ESTABLISHES THE INTENTIONAL, ARBITRARY AND SYSTEMATIC EXCLUSION OF PERSONS OF MEXICAN DESCENT, AND THE FAILURE OF THE TEXAS COURT OF CRIMINAL APPEALS TO

APPLY THE "RULE OF EXCLUSION" ANNOUNCED BY THE SUPREME COURT OF THE UNITED STATES IN NORRIS V. ALABAMA, 294 U. S. 587 (1935), DEPRIVES PETITIONER OF HIS LIBERTY WITHOUT DUE PROCESS OF LAW AND DENIES TO HIM THE EQUAL PROTECTION OF THE LAWS.

THE EVIDENCE

The Texas Court of Criminal Appeals summarizes the evidence relied on by petitioner as follows:

> "It may be said, therefore, that the facts relied upon by the appellant to bring this case within the rule of systematic exclusion is that at the time of the trial of this case there were 'some male persons of Mexican or Latin-American descent in Jackson County' who possessed the qualifications requisite to service as grand or petit jurors, and that no Mexican had been called for jury service in that county for a period of twenty-five years." 251 S. W. 2d 531. (R., p. 93).

Since 1930, The United States Bureau of the Census has not used the classification "Mexican" in compiling populations statistics. However, the 1950 census contains statistics concerning "persons of Spanish surname." The 1950 census figures for Jackson County, Texas, show the following facts:

1. The total population of Jackson County is 12,916.[5] Persons of Spanish surname total 1,865, of whom 1,738 are native-born citizens, and 65 are naturalized citizens.[6] Persons with Spanish sur-

5. U. S. Census, 1950, Vol. II, Part 43, p. 180.
6. *Id.*, Vol. IV, Part 3, Ch. C, p. 45.

names thus constitute about 14% of the total population of Jackson County.

2. The number of males in Jackson County aged 21 or over is 3,754.[7] Of these, 408, or approximately 11%, have Spanish surnames.[8]

3. While no separate figures are given relative to the educational attainments of males of Spanish surname, the census shows that of 645 such persons aged 25 or over, 245 have completed from 1 to 4 years of elementary schooling; 85 have completed the fifth and sixth years; 35 have completed 7 years of elementary schooling; 15 have completed 8 years; 60 have completed from one to three years of high school; 5 have completed 4 years of high school; and 5 are college graduates.[9] For 20 such persons, no educational information was available.

PRESCRIBED QUALIFICATIONS FOR JURY SERVICE.

A. *Grand Jury.* (See Appendix "A")

In order to be eligible for service on Texas grand juries, a person must be a male citizen who is qualified to vote; he must be a freeholder in the state or a householder in the county; he must be of sound mind and good moral character and able to read and write; and he must not have been convicted of a felony or be under indictment for theft or any felony. Tex. Code Crim. Proc., Art. 339. While no age requirement is specified, the voting qualification impliedly

7. *Id.*, Vol. II, Part 43, p. 180.
8. *Id.*, Vol. IV, Part 3, Ch. C, p. 67.
9. *Ibid.*

limits grand jury service to persons 21 years of age or more. *Hill* v. *State*, 99 Tex. Crim. Rep., 290, 269 S. W. 90 (1925). There is no property qualification, since a "householder" is any person who is the head of a family." *Lane* v. *State*, 29 Tex. Crim. App. 310, 15 S. W. 827 (1890).

B. *Petit Jury.* (See Appendix "A")

In order to qualify as a petit juror, a person must be a male citizen, 21 years of age, who is qualified to vote and who is of sound mind, able to read and write, and either a householder in the county or a freeholder in the state. Tex. Code Crim. Proc., Arts. 612, 616. The possession of a poll tax is not a prerequisite for eligibility for service on petit juries. Tex. Code Crim. Proc., Art. 579. Oddly enough, the statutes do not require that a prospective petit juror in a criminal case be of good moral character.

ARGUMENT

In 1935, this Court announced that the long and continued failure to call members of the Negro race for jury service, where it is shown that Negroes were available and qualified for jury service, was sufficient to make out a case of discriminatory exclusion. *Norris* v. *Alabama*, 294 U. S. 587. This holding has been consistently followed by this Court. *Cassel* v. *Texas*, 339 U. S. 282 (1950); *Hill* v. *Texas*, 316 U. S. 400 (1942); *Smith* v. *Texas*, 311 U. S. 128 (1941).

A. *This Case Comes within the Rule of Norris* v. *Alabama.*

In cases involving the exclusion of Negroes, this Court has held that evidence establishing the follow-

ing facts made out a case of discriminatory exclusion:

> In a county where 1/6 of the population was colored, no Negro had served as a juror for many years. *Hale* v. *Kentucky*, 303 U. S. 613 (1938).
>
> In a county having a population of 36,881, including 2,688 Negroes, no Negro had been called for jury service in a generation, although at least 30 Negroes in the county qualified for jury service. *Norris* v. *Alabama*, 294 U. S. 587 (1935).
>
> No Negro had been called for jury service in a generation, although Negroes made up 1/6 of the population. *Norris* v. *Alabama, supra.*

In this case, as shown above, about 14% of the population of Jackson County consisted of persons of Mexican descent. In view of the census figures pertaining to the number of male citizens 21 years of age or more, and in view of the figures concerning the number of school years completed by persons of Mexican descent 25 years of age or over, it is obvious that in Jackson County there were, at the very least, 30 persons of Mexican descent qualified to serve as jurors. Cf. *Norris* v. *Alabama, supra.* While there are no figures concerning the number of poll taxes held by persons of Mexican descent, this fact is altogether irrelevant in determining qualification for service on petit juries. And yet, for a period of twenty-five years, no person of Mexican descent has served on a Jackson County jury.

In *Patton* v. *Mississippi*, 332 U. S. 463 (1947), the evidence showed that there were only 12 or 13 Negroes available for jury service in the county, as against 5,000 whites. This Court said:

> "Whatever the precise number of qualified colored electors in the county; there were some; and if it can possibly be conceived that all of them were disqualified for jury service . . . we do not doubt that the State could have proved it." 332 U. S. at 648.

To use the very language of the Texas court in this case, the facts established that there were "some male persons of Mexican descent" in Jackson County who possessed the qualifications requisite to service as jurors. 251 S. W. 2d 531, 533. Further, here there is no need for this Court to demonstrate an unwillingness to presume that all persons of Mexican descent in Jackson County are disqualified. In this case the State stipulated that there were some persons of Mexican descent who possessed *all* necessary qualifications for jury service. 251 S. W. 2d 531, 533.

B. *Refusal to Decide This Case under the Rule of Norris* v. *Alabama Denies to Petitioner the Equal Protection of the Laws.*

From the foregoing, it appears conclusively that, were petitioner a Negro, the Texas court would have been bound to reverse the conviction and order the indictment dismissed. The question in this case, then, is simply this: Does the rule of *Norris* v. *Alabama* apply to a case involving exclusion of persons of Mexican descent from jury service?

The Texas court refused to apply the aforementioned rule. Quoting from its previous decision in *Sanchez* v. *State*, 147 Tex. Crim. Rep. 436, 181 S. W. 2d 87 (1944), the Texas court said:

> " 'In the absence of a holding by the Supreme Court of the United States that nationality and race bear the same relation within the meaning of the constitutional provision (Fourteenth Amendment) mentioned, we shall continue to hold that the statute law of this State furnishes the guide for the selection of juries in this State, and that, in the absence of proof showing express discrimination by administrators of the law, a jury so selected in accordance therewith is valid.' " 251 S. W. 2d 531, 533.

In the concluding sentence of its opinion, the Texas court reiterated its position by saying that "in the absence of proof of actual discrimination," it cannot be said that petitioner was discriminated against in the selection of juries and thereby denied equal protection of the laws.

The rule of *Norris* v. *Alabama* is nothing more nor less than a rule of evidence. It creates a presumption which arises upon the showing of certain facts. As the Texas court pointed out, "the effect of the rule of exclusion is to furnish means by which proof of discrimination may be accomplished." 251 S. W. 2d 531, 535.

The effect of the Texas court's holding in this case, and in previous cases involving persons of Mexican descent, is simply this: In the State of Texas, there is one rule of evidence for Negroes, and a different rule for persons of Mexican descent. From certain facts, the Texas court will conclude, in accordance with the *Norris* case, that there has been an arbitrary, intentional and systematic exclusion of Negroes. Given the same facts, but changing the color of the accused, the Texas court refuses to find

that there has been an arbitrary, intentional and systematic exclusion of persons of Mexican descent. The Texas court requires a person of Mexican descent to show express discrimination, and it states frankly that persons of Mexican descent must bear this more onerous burden of proof solely and simply because they are not Negroes.

It is patent, therefore, that the Texas court has denied to this petitioner a means of proving discrimination which is available to Negroes; and no effort is made to disguise the fact that this denial is based solely and exclusively on the fact that this petitioner is not a Negro. To put it bluntly, the Texas court has set up a classification based solely, exclusively and expressly on race.

Let us suppose that the legislature of the State of Texas enacted a statute to the effect that proof of certain facts by a Negro should give rise to certain presumptions favorable to a Negro, but that proof of the same facts by a white person should give rise to no such presumptions in favor of the white person. Or, to bring the matter closer to the case at hand, suppose that the legislature of the State of Texas, by statute, provided that proof of long-continued absence of Negroes from juries where it is shown that there are qualified Negroes should give rise to a presumption of intentional exclusion of Negroes, but that proof of long-continued absence of persons of Mexican descent from juries should not be sufficient to overcome the presumption that the jury-selecting officials acted fairly and without prejudice. Can there be any doubt concerning the invalidity of such a statute? If doubt there is, even a casual reading of

Omaya v. *California*, 332 U. S. 633 (1948), will dispel it.

Although a thorough search of the cases has been made, no case has been found which furnishes even the semblance of support for the astounding proposition that a state court may make the outcome of litigation depend upon the race of a litigant. By making the outcome of a case depend on the applicability of a rule of evidence, and by making the applicability of the rule of evidence depend on the race or color of a litigant, the Texas court has made the outcome of a case depend on the race of the accused. The conviction in this case would have been reversed were petitioner a Negro. The conviction is affirmed because petitioner is a person of Mexican descent. Can any person sincerely believe that, as the Texas court says, the equal protection clause of the Fourteenth Amendment not only permits, but compels such an incongruous rule of law?

Even should petitioner admit, as he does not, that the Fourteenth Amendment, insofar as discrimination in the organization of state juries is concerned, contemplated only two classes—whites and Negroes—it does not follow that, in the formulation of rules of evidence, the Texas court may discriminate against white persons by making the sufficiency of the evidence depend on the color of the person presenting it. The Fourteenth Amendment prohibits discrimination against whites as well as against Negroes. *Buchanan* v. *Warley*, 245 U. S. 360 (1917). Petitioner would also point out that the litigant injured by the discriminatory rule of evidence in the *Oyama* case was not a Negro. Thus, it

cannot be said that, insofar as the validity of rules of evidence is concerned, the Fourteenth Amendment recognizes only two classes—Negroes and whites. And even if this untenable proposition be admitted for the purpose of argument, it does not follow that the Amendment sanctions discrimination against white persons by rules of evidence which imposes upon them a burden more onerous than that which is placed on Negroes.

A classification based on race is not beyond the reach of the Constitutional prohibitions merely because it is a judicial tribunal, rather than a legislature or administrative agency, which has seen fit to make race the determining factor in selecting the rules which it will apply. As this Court said in *Strauder* v. *West Virginia*, 100 U. S. 303 (1879):

> "A state may act through different agencies—either by its legislative, its executive or its judicial authorities, and the prohibitions of the amendment extend to all action of the state denying equal protection of the laws, whether it be action by one of these agencies or by another." 100 U. S. at 318.

More recently, the late Chief Justice Vinson said:

> "That the action of state courts and of judicial officers in their official capacities is to be regarded as action of the State within the meaning of the Fourteenth Amendment is a proposition which has long been established by the decisions of this Court." *Shelley* v. *Kraemer*, 334 U. S. 1, 14 (1948).

Petitioner, therefore, submits that, insofar as proof of the fact of intentional and systematic exclusion of persons of Mexican descent from jury

service is concerned, the Texas court cannot, consistently with the provisions of the Fourteenth Amendment, hold that petitioner has not shown such exclusion. It cannot do so without denying to petitioner the equal protection of the laws. The unconstitutional basis for the decision of the Texas court in this case can find no justification in the fact that that court's denial of petitioner's right to the equal protection of the laws had as its objective the upholding of the unconstitutional discriminatory acts of the jury commissioners of Jackson County, Texas. A state court cannot, by adopting a discriminatory rule of evidence, weave a protective cloak behind which local jury commissioners can continue to disregard the plain mandates of the Fourteenth Amendment.

CONCLUSION

Petitioner submits that the evidence in this case establishes beyond any doubt that the jury commissioners of Jackson County, Texas, have, for at least 25 years, consciously and deliberately excluded persons of Mexican descent from jury service. To attribute the complete absence of persons of petitioner's national origin from Jackson County juries to coincidence strains all credulity. Such uniformity of result betrays the existence of a master plan. If my name appears on 14% of the lots from which repeated drawings are made over a period of 25 years, and my name is never drawn a single time, I would be more than justified in suspecting that the person doing the drawing was cheating.

By engaging in such practices, the jury commissioners have violated the constitutional rights of

this petitioner. They have denied to petitioner, and to all other persons of Mexican descent, the right to a trial by a fair and impartial jury. The Texas court's "two classes" theory is without foundation in reason; it is without support in the decisions of this or any other court. All courts which have considered the question have held that the Fourteenth Amendment forbids discrimination because of national origin. Such a theory, itself without foundation, cannot support the heavy weight of the discriminatory practices which it is forced to uphold in this case, if the decision of the Texas court is to stand.

The invalidity of the "two classes" theory becomes apparent when it is examined in the light of the minority status of persons of Mexican descent in Texas. They occupy an inferior social and economic position. The increase in the number of cases in which the Texas court has given its sanction to the practice of excluding them from jury service shows that they also occupy an inferior legal status. The Texas court has announced that it will continue to hold them in such inferior legal status until this Court compels it to do otherwise.

While the Texas court elaborates on its "two classes" theory, in Jackson County, and in other areas in Texas, persons of Mexican descent are treated as a third class—a notch above the Negroes, perhaps, but several notches below the rest of the population. They are segregated in schools, they are denied service in public places, they are discouraged from using non-Negro rest rooms. They are excluded from juries, and a Texas court upholds their exclusion by a

paternal reminder that they are members of the dominant white class. As members of the dominant class, they are chided by the Texas court for seeking "special privileges." They are told that they are assured of a fair trial at the hands of persons who do not want to go to school with them, who do not want to give them service in public places, who do not want to sit on juries with them, and who would prefer not to share rest room facilities with them, not even at the Jackson County court house. Finally, to insure that they do not succeed in their selfish demand for "special privileges," the Texas court formulates a special rule of evidence for them so that they may never gain admission to the jury box.

That the Texas statutory scheme for the selection of juries is not in itself discriminatory is recognized by petitioner. The Texas statutes do not exclude persons of Mexican descent from jury service. But this Court well knows that the Texas statutory scheme is capable of being and, in fact, has been, used in a discriminatory manner. Indeed, the State of Texas is more than proportionately represented in the roll call of cases in which this Court has condemned discriminatory administration of laws which are capable of being carried out without discrimination if only those who administer them are willing to perform their duties fairly and impartially.

Petitioner agrees with the Texas court when it says that a jury selected in accordance with the Texas statutory scheme presents no cause for complaint. If the inherent fairness of the Texas jury statutes had been accepted and applied by the jury

commissioners of Jackson County, petitioner would not be asking this Court to aid him in securing his rights. If Texas jury commissioners had seen fit to administer non-discriminatory statutes in a non-discriminatory manner, the "two classes" theory would never have been concocted.

The language of the Fourteenth Amendment is clear and direct. It states that no state "shall deny to any person within its jurisdiction the equal protection of the laws." The words "any person within its jurisdiction" clearly includes persons of Mexican descent. The Amendment guarantees to persons of Mexican descent the right to sit on juries. "If this could be refused solely on the ground of race or nationality, the prohibition of the denial to any person of the equal protection of the laws would be a barren form of words." *Truax* v. *Raich*, 229 U.S. 33, 41 (1915).

All of the talk about "two classes"; all of the verbal pointing with alarm at a "special class" which seeks "special privileges" cannot obscure one very simple fact which stands out in bold relief: the Texas law points in one direction for persons of Mexican descent, like petitioner, and in another for Negroes. *Cf. Oyama* v. *California*, 332 U. S. 633, 641 (1947). Under such circumstances, can it be said that the State of Texas has accorded to petitioner the protection of equal laws? Distinctions negate equality, and "distinctions between citizens solely because of their ancestry are by their very nature odious to a free people whose institutions are

founded upon the doctrine of equality." *Hirabayashi* v. *United States*, 320 U. S. 81, 100 (1943).

PRAYER

Petitioner, therefore, prays that the judgments of the trial court and of the Texas Court of Criminal Appeals be reversed, and that the indictment against petitioner be ordered dismissed.

Respectfully submitted,

CARLOS C. CADENA
112 College Street
San Antonio 5, Texas

GUS C. GARCIA
403 N. Flores Street
San Antonio, Texas
Attorneys for Petitioner

MAURY MAVERICK, JR.
San Antonio, Texas

JOHN J. HERRERA
Houston, Texas

JAMES DE ANDA

CHRIS ALDRETE
Of Counsel

By: Carlos C. Cadena
Carlos C. Cadena

APPENDIX "A"

STATUTORY APPENDIX

TEXAS CODE OF CRIMINAL PROCEDURE

Organization of the Grand Jury.

Art. 333. The district judge shall, at each term of the district court, appoint three persons to perform the duties of jury commissioners who shall possess the following qualifications:

1. Be intelligent citizens of the county and able to read and write.

2. Be qualified jurors and freeholders in in the county.

3. Be residents of different portions of the county.

4. Have no suit in court which requires the intervention of a jury.

Art. 338. The jury commissioners shall select sixteen men from the citizens of different portions of the county to be summoned as grand jurors for the next term of court.

Art. 339. No person shall be selected to serve as a grand juror who does not possess the following qualifications:

1. He must be a citizen of the State, and of the county in which he is to serve, and qualified under the Constitution and laws to vote in said county; but whenever it is made to appear that

the requisite number of jurors who have paid their poll taxes cannot be found within the county, the court shall not regard the payment of poll taxes as a qualification for services as a juror.

2. He must be a freeholder within the State, or a householder in the county.

3. He must be of sound mind and of good moral character.

4. He must be able to read and write.

5. He must not have been convicted of any felony.

6. He must not be under indictment or other legal accusation for theft or any felony.

Art. 344. Within thirty days of the next terms of the district court and not before, the clerk shall open the envelope containing the list of grand jurors, make out a copy of the names of those selected as grand jurors, certify it under his official seal, and deliver it to the sheriff.

Art. 345. The sheriff shall summon the persons named in the list at least three days, exclusive of the day of service, prior to the first day of the term of court at which they are to serve, by giving personal notice to each juror of the time and place when and where he is to attend as a grand juror, or by leaving at his place of residence with a member of his family over sixteen years old a written notice to such juror

that he has been selected as a grand juror, and the time and place when and where he is to attend.

Art. 352. When as many as twelve men summoned to serve as grand jurors are in attendance upon the court, it shall proceed to test their qualifications as such.

Art. 354. In trying the qualifications of any person to serve as grand juror, he shall be asked:

1. Are you a citizen of this State and county, and qualified to vote in this county, under the Constitution and laws of this State?

2. Are you a freeholder in this state or a householder in this county?

3. Are you able to read and write?

Art. 355. When, by the answer of the person, it appears to the court that he is a qualified juror, he shall be accepted as such, unless it be shown that he is not of sound mind or of good moral character, or unless it be shown that he is not in fact qualified to serve as a grand juror.

Qualifications for Serving as Petit Jurors in Criminal cases. Texas Code of Criminal Procedure:

Art. 616. A challenge for cause is an objection made to a particular juror alleging some fact which renders him incapable or unfit to serve on the jury. It may be made for any one of the following causes:

1. That he is not a qualified voter in the State and county, under the Constitution and laws of the State.

2. That he is neither a householder in the county nor a freeholder in the State.

3. That he has been convicted of theft or any felony.

4. That he is under indictment or other legal accusation for theft or any felony.

5. That he is insane, or has such defect in the organs of seeing, feeling, or hearing, or such bodily or mental defect or disease as to render him unfit for jury service.

6. That he is a witness in the case.

7. That he served on the grand jury which found the indictment.

8. That he served on a petit jury in a former trial of the same case.

9. That he is related within the third degree of consanguinity or affinity to the defendant.

10. That he is related within the third degree of consanguinity or affinity to the person injured by the commission of the offense, or to the special prosecutor, if there be one.

11. That the juror has conscientious scruples in regard to the infliction of the punishment of death for crime.

12. That he has a bias or prejudice in favor of or against the accused.

13. That from hearsay or otherwise there is established in the mind of the juror such a conclusion as to the guilt or innocence of the defendant as will influence him in his action in finding a verdict.

14. That he cannot read and write. This cause of challenge shall not be sustained when it appears to the court that the requisite number of jurors who are able to read and write cannot be found in the county.

Art. 616, of course, has reference to the formation of petit juries in capital cases. But Art. 632 of the Code of Criminal Procedure provides: "Challenges for cause in all criminal cases are the same as provided in capital cases in Art. 616, except cause 11 in said article."

Art. 579. Failure to pay poll tax shall not disqualify any person from jury service.

APPENDIX "B"
STATUS OF PERSONS OF MEXICAN DESCENT IN TEXAS

The Spanish-Mexican people have been in the Southwest for more than 300 years. During the Spanish-colonial period their numbers were small, and they were thinly distributed from the Gulf Coast of Texas to the Pacific. The brief period during which the Southwest was a part of the Mexican republic did little to change either the isolation, the cultural outlook, or the numbers of these people. It was the Mexican War, and the transfer of the Southwest to the United States, that made drastic changes in their way of life.[1]

In Texas, the war for independence aroused antagonisms that still descent. "Mexican" became a term of opprobium, and barriers began to be built up between those of Mexican descent and the so-called Anglos. Those barriers led to the establishment of a status for "Mexicans" like that assigned by the dominant group to the Negro.[2]

The great movement into the United States of people from Mexico during 1870-1920 accentuated these natio-racial distinctions. Today there are some 1,500,000 persons of Mexican descent in Texas, the majority of whom are citizens of the United States. There are 30 counties whose population are more than 40% of Mexican descent.[3]

Being largely of Indian blood, the Mexican immigrant was literally and sociologically highly

1. Carey McWilliams, NORTH FROM MEXICO, Lippincott, 1949.
2. Pauline Kibbe, LATIN AMERICANS IN TEXAS, U. of N. Mex. Press, 1946.
3. Lyle Saunders, THE SPANISH-SPEAKING POPULATION OF TEXAS. U. of Texas Press, 1949.

visible. That visibility became the peg upon which to hang the stereotype of the "Mexican"; and, once stereotyped, the immigrant acquired burdens which augmented his socio-economic problems and increased his sociological visibility. Thus, he fell into a vicious circle out of which he has been trying to break with only meager success.[4]

It still is not unusual to find in Texas segregated schools for "Mexican" children.[5] Often, they are barred from swimming pools, cafes, movie theatres, and even public parks.[6] In some communities there are separate American Legion Posts for "whites" and "Mexicans." Restrictive covenants limit the areas in which a person of Mexican descent may buy or rent a home.[7] These practices have been so prevalent that the Texas legislature on several occasions has considered the passage of laws prohibiting discrimination against persons of Mexican descent. Only the fear that such protection would have to be extended to Negroes also has prevented the passage of such legislation!

While legally white (anthropologically he is predominantly Indian)[8] frequently the term "white" excludes the "Mexican" and is reserved for the rest of the non-Negro population. Official forms sometimes call for the "racial" classification of "White-Negro-Mexican." Even Selective Service, during World War II, indulged in this practice for a period,

4. Eli Ginzberg and Douglas W. Bray. THE UNEDUCATED. Columbia U. Press. 1953 (Chapter 4).

5. George I. Sanchez. CONCERNING SEGREGATION OF SPANISH-SPEAKING CHILDREN IN THE PUBLIC SCHOOLS. U. of Texas Press. 1951.

6. George I. Sanchez. "Pachucos in the Making." COMMON GROUND. Autumn. 1943.

7. See Clifton v. Puente. 218 S. W. 2d 272 (Tex. Civ. App., 1949).

8. (Mexico) Secretaria de la Economia Nacional. MEXICO EN CIFRAS (ATLAS ESTADISTICO). 1934. See also: George I. Sanchez. MEXICO, A REVOLUTION BY EDUCATION. Viking. 1936.

and the Texas Department of Public Health still uses those classifications in at least one official form. It is so well recognized that Mexican-Americans are a class apart that the United States Bureau of the Census, since 1930, has been collecting data that distinguish between the two segments of the white population in Texas and the rest of the Southwest. That Bureau, as part of the 1950 Census of Population, has issued a special report, *Persons of Spanish Surname.*[9] In its *1950 United States Census of Housing,* that Bureau presents a special tabulation for people of Spanish surname.[10] The under-privileged status of this population group is quickly evidenced by these Census reports. Not only is the Mexican-American commonly regarded as a class apart, but by every objective measurement — from biological makeup to deaths from tuberculosis and from infantile diarrhea — he *is* a class apart.

The professional literature is replete with data supporting the statement that the Mexican-American is regarded as, and is, a class apart. From the pioneer surveys of Professor Paul S. Taylor, of the University of California Department of Economics, a quarter of a century ago,[11] to graduate theses written within the last year or two at the University of Texas, all evidence bears this out.

The attitude of the non-professional on the subject is well exemplified by the common practice in the Texas press of "race-labelling" this population

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9. U. S. Department of Commerce, Bureau of the Census, *SPECIAL REPORT P-E NO. 3C.*

10. U. S. Department of Commerce, Bureau of the Census, *BULLETIN H-A 45.*

11. Paul S. Taylor, AN AMERICAN-MEXICAN FRONTIER, U. of N. Carolina Press, 1932. See also: Herschel T. Manuel, THE EDUCATION OF MEXICAN AND SPANISH-SPEAKING CHILDREN IN TEXAS, U. of Texas Press, 1930.

group, just as the Negro is race-labelled. This attitude is also evidenced by the previously mentioned segregation of "Mexicans" in public schools—a practice responding not to pedagogical considerations but to the attitude of the dominant group in the community.[12]

Because of the widespread discrimination against persons of Mexican descent, Mexico at one time "blacklisted" the entire State of Texas (i. e., refused to permit Mexican contract workers to enter the State of Texas for employment). The State of Texas officially recognized the widespread mistreatment of persons of Mexican descent, citizens and aliens alike, by establishing the Texas Good Neighbor Commission in 1943.[13] The Commission was established by the State to seek to improve the relations between the two clearly recognized classes of its white population—"Anglos" and "Latins." It was hoped that, by taking this step, the State would be removed from Mexico's "blacklist." That the action was not fully successful is shown by the fact that Mexico still "blacklists" many areas in Texas and refuses to allow *braceros* (Mexican contract workers brought in under the terms of the international agreement with the United States) to work there.

It seems significant, indeed, that not only do both professional and non-professional workers in Texas recognize that persons of Mexican descent are, and are treated as, a class apart, but the State of Texas, too, concurs in that recognition. Some ten years ago the Governor issued a proclamation, and

12. Virgil Strickland and George I. Sanchez "Spanish Name Spells Discrimination," THE NATION'S SCHOOLS, January, 1948.
13. McWilliams, *op. cit.*, especially pp. 270-275.

the Legislature adopted a joint resolution, recognizing that this minority group was being subjected to discrimination. That the Good Neighbor Commission has not fulfilled its mission, and that persons of Mexican descent are still subjected to widespread discrimination as a class, was recognized by the present governor of Texas when he named the Texas Council on Human Relations (now defunct) to attempt to do unofficially and with private support, what the Good Neighbor Commission could not do as an official and publicly-supported agency of the State.